

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.03.2018
Date of Verdict : 26.06.2018

CORAM
THE HONOURABLE MR.JUSTICE M.S.RAMESH

Crl.O.P.Nos.27507 & 10089 of 2017
and Crl.M.P.Nos.6680 & 6681 of 2017

S.Suriya Devi ...Petitioner in Crl.O.P.27507/2017
& Respondent in Crl.O.P.10089/2017

V.

Thilip Kumar ...Respondent in Crl.O.P.27507/2017
& Petitioner in Crl.O.P.10089/2017

Prayer in Crl.O.P.No.27507/2017:- Criminal Original Petition filed under Section 482 Cr.P.C. to direct the Additional Family Court, Coimbatore to dispose the petition in M.C.No.38 of 2017 expeditiously pending on the file of the Additional Family Court, Coimbatore within time frame as fixed by this Court.

Prayer in Crl.O.P.No.10089/2017:- Criminal Original Petition filed under Section 482 Cr.P.C. to quash the proceedings in M.C.No.38 of 2017 on the file of the Additional Family Court, Coimbatore.

For Petitioner : Ms.V.S.Usha Rani
in Crl.OP.27507/2017
& Respondent in Crl.OP.10089/2017

For Petitioner : Mr.R.Baskar
in Crl.OP.10089/2017
& Respondent in Crl.OP.27507/2017

C O M M O N O R D E R

While the husband had filed the petition in Crl.O.P.No.10089 of 2017 seeking for quashing the maintenance case in M.C.No.38 of 2017 on the file of the learned Additional Judge, Family Court, Coimbatore preferred by the respondent/wife, Crl.O.P.No.27507 of 2017 has been filed by the wife seeking for an expeditious disposal of her petition in MC.No.38 of 2017.

2.Heard Ms.V.S.Usha Rani, learned counsel for the wife and Mr.R.Baskar, learned counsel for the husband.

3.For the sake of convenience, the facts revealed in

CrI.O.P.No.10089 of 2017 is being addressed to. The marriage between the petitioner and the respondent herein was performed on 25.05.2014. After brief stay together for less than two months, both the parties had separated. According to the petitioner, the respondent had left the matrimonial house on 13.07.2014. During their estranged relationship, the petitioner herein left the country on 14.02.2015 in connection with his employment.

4.It is in connection with the estranged relationship, the respondent herein had filed a complaint under the Protection of Women from Domestic Violence Act, 2000 in DVA.No.27 of 2016 seeking for various reliefs including the relief of monthly maintenance, in which the respondent's husband and in-laws were made as party respondents. On receipt of summons in the domestic violence case for the complaint dated 25.05.2016, the petitioner/husband herein moved a quash petition in CrI.O.P.No.2972 of 2017, which is pending against the petitioner herein.

5.But, would the aggrieved person be entitled to claim maintenance simultaneously under the provisions of Code of Criminal Procedure Code as well as Domestic Violence Act for the same cause of action? The scheme of Domestic Violence Act is to provide for an effective protection of the lives of women guaranteed under the Constitution, who are the victims of violence of any kind occurring within the Family for incidental matters. Section 125 Cr.P.C., empowers the Magistrate to order for maintenance when it is established that the person having sufficient means, neglects or refuses to maintain his wife. Whenever such an order of maintenance is passed under Section 125 Cr.P.C., and in the given circumstances, the aggrieved person is of the view that there has been further acts of domestic violence, incurring expenses and loss, the order already passed under Section 125 Cr.P.C., will not preclude the aggrieved person in invoking the provision under Section 20 of the Domestic Violence Act. However, when the aggrieved person has invoked the provisions of Section 125 Cr.P.C., on a set of cause of action or refusal to maintain, it would not be permissible for her to invoke Section 20 of the Domestic Violence Act for the same cause of action, pleading that she had incurred expenses and losses owing to these same acts of domestic violence and thereby claim additional maintenance. The language deployed under Section 20(1)(d) is only for the purpose of enabling the aggrieved person to seek for maintenance when there has been further acts of domestic violence, pursuant to an order passed under Section 125 Cr.P.C., whereby she incurs expenses or losses as a result of the domestic violence. It is with this object that Section 20(1) of the Domestic Violence Act has been enacted and by no stretch of imagination can it be said that a wife can simultaneously claim maintenance before two

forums, on the same set of cause of actions, under the Code of Criminal Procedure Code as well as the Domestic Violence Act. Such parallel and simultaneous proceedings would not only be illegal but also would amount to an abuse of process of law. In the judgment relied upon by the learned counsel for the petitioner reported in 2015 (4) LW 545 [B.Prakash V. Deepa and another], this Court had observed as follows:-

"17.The next question, which arises for consideration, is as to whether an order for maintenance made by a Magistrate under Section 125 of the Code, shall be a bar for a Magistrate acting under Section 20 of the Act to pass an order for maintenance. In this regard, again, we should have a look into the Section 20(1) (d) of the Act, which states that the monetary relief granted under Section 20 of the Act may include an order for maintenance, in addition to an order of maintenance under Section 125 of the Code. Thus, it is crystal clear that a previous order for maintenance passed by a Magistrate under Section 125 of the Code, is not a bar for a Magistrate acting under Section 20 of the Act to pass yet another order granting monetary relief under Section 20 of the Act, by way of maintenance under Section 125 of the Code. Here, it needs to be noted that the subsequent order made under Section 20 of the Act is not in any way in modification or variation of the earlier order made under Section 125 of the Code by a Magistrate.

18. If the wife wants to modify an order made under Section 125 of the Code, seeking enhancement of the maintenance amount, the only option available for her is to file a petition under Section 127 of the Code before the same Magistrate, who passed the order. In other words, the order made under Section 125 of the Code can be modified or varied only by the same Magistrate, who passed the earlier order. An order made under Section 125 of the Code for maintenance by one Magistrate cannot be varied or modified by a Magistrate acting under Section 20 of the Act. Therefore, it should be noted that a monetary relief

granted towards maintenance passed under Section 125 of the Code. If an order has already been made under Section 125 of the Code for maintenance, there can be no doubt that the wife had proved either neglect or refusal on the part of the husband. If the wife wants an order under Section 20 of the Act, in addition to the order under Section 125 of the Code, she has to prove fresh acts of the husband constituting the domestic violence subsequent to the passing of the earlier order under Section 125 of the Code. She cannot rely on the acts of the husband constituting domestic violence, which happened prior to the 16 passing of the order under Section 125 of the Code. For getting an order under Section 20 of the Act, in addition to the earlier order under Section 125 of the Code, the wife should plead and prove that subsequent to the said order made under Section 125 of the Code, the husband had caused domestic violence and on account of the same, she had suffered loss and thus, she is entitled for additional amount as maintenance. Thus, it is manifestly clear that a previous order made under Section 125 of the Code is not a bar for an aggrieved wife to approach a Magistrate under Section 20 of the Act, for monetary relief as an additional relief of maintenance, provided subsequent to the passing of the earlier order under under Section 125 of the Code, the husband has committed domestic violence resulting loss to the wife."

6. In the present case in hand, I have perused the pleadings in the petition filed under Domestic Violence Act for monetary relief as well as the petition under Section 125 of Cr.P.C., seeking for maintenance. The grievance of the respondent and the cause of action alleged in both these petitions are one and the same. The respondent herein had already invoked the provisions of the Domestic Violence Act seeking for monetary reliefs among other reliefs on 25.05.2016. Subsequently, she had invoked the provisions under Section 125 Cr.P.C., on 08.02.2017. In the petition under Domestic Violence Act, the respondent herein had sought for a direction to pay a sum of Rs.50,000/- for maintenance under Section 20(3) of the Domestic Violence Act. In the subsequent maintenance case filed under Section 125 Cr.P.C., the respondent herein had sought for a monthly maintenance of Rs.1 lakh.

7. Insofar as Section 20(3) of Domestic Violence Act is concerned, the same has to be read along with sub section (1) and the powers of the Magistrate to order for a lumpsum payment or a monthly payment under sub section (3) is a continuation of the powers vested on the Magistrate while ordering monetary relief to meet the expenses incurred and losses suffered by the aggrieved person. In other words, whenever an application seeking for monetary relief under Section 20(1) is made and when the Magistrate comes to the conclusion that such a monetary relief is required to be ordered in favour of the aggrieved person, he shall have powers to order such an amount either as lumpsum payments or monthly payment of maintenance as provided under sub section (3) of the Act. In any case, the amount referred to under sub section (3) is only for the maintenance of the aggrieved person.

8. The petitioner herein having chosen to invoke the provisions of the Domestic Violence Act seeking for monetary relief under Section 20(3), cannot subsequently invoke Section 125 Cr.P.C., for maintenance on the same set of facts and cause of action in view of my reasonings given above. Even otherwise, there is no provision under the Code of Criminal Procedure empowering the Magistrate to order for maintenance under Section 125 Cr.P.C., when it is brought to his notice that an order for maintenance has already been granted under Domestic Violence Act or any other enactments. If both the Courts are permitted to adjudicate the claim made by the respondent/wife and in case, an order is passed granting maintenance in both the cases, there would be gross miscarriage of justice and the petitioner would be put to serious prejudice. Hence, it would be impediment that the subsequent proceedings initiated by the respondent herein under the provisions of Section 125 Cr.P.C., requires to be quashed. No prejudice would be caused to the respondent by quashing the proceedings since her interest has already been protected in her earlier proceedings under Domestic Violence Act.

9. In view of the aforesaid discussions, the petition in Crl.O.P.No.10089 of 2017 is allowed. Consequently, the proceedings in M.C.No.38 of 2017 on the file of the learned Additional Judge, Family Court, Coimbatore stands quashed. In view of the quashing of the proceedings in M.C.No.38 of 2017 on the file of the learned Additional Judge, Family Court, Coimbatore, Crl.O.P.27507 of 2017 seeking for expeditious disposal of the maintenance case, stands dismissed. Consequently, connected Miscellaneous Petitions are closed.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

DP

To

The Additional Family Court,
Coimbatore.

+1cc to Ms.UshaRani, Advocate, sr.no.40513

+3cc to Mr.R.Baskar, Advocate, sr.no.40161

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and CrI.M.P.Nos.6680 & 6681 of 2017

GSP (11/07/20188)



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